

1 COLIN M. THOMPSON, Esq.  
2 2d Floor, J.E. Tenorio Bldg.  
3 PMB 917 Box 10001  
4 Saipan, MP 96950  
5 Telephone: (670) 233-0777  
6 Facsimile: (670) 233-0776

FILED  
Clerk  
District Court

NOV 02 2005

5 Attorney for Defendants  
6 Micronesian Telecommunications Corporation and  
Pacific Telecom, Inc.

For The Northern Mariana Islands  
By \_\_\_\_\_  
(Deputy Clerk)

7 **IN THE UNITED STATES DISTRICT COURT**

8 **FOR THE**  
9 **NORTHERN MARIANA ISLANDS**

10 **CV 05 - 0034**

11 **BOARD OF THE MARIANAS PUBLIC LAND** ) CIVIL ACTION NO. \_\_\_\_\_  
12 **AUTHORITY AND MARIANAS PUBLIC LAND** )  
13 **AUTHORITY, for themselves and on behalf of the** )  
14 **Northern Marianas Descent,** )  
15 **Plaintiffs,** ) NOTICE OF REMOVAL  
16 **MICRONESIAN TELECOMMUNICATIONS** )  
17 **CORPORATION, PACIFIC TELECOM, INC.,** )  
18 **AND DOES 1-5,** )  
19 **Defendants.** )  
20 \_\_\_\_\_

21 **NOTICE OF REMOVAL**

22 **TO: THE HONORABLE ALEX R. MUNSON, CHIEF JUDGE,**  
**DISTRICT FOR THE NORTHERN MARIANAS ISLANDS**

23 **INTRODUCTION:**

24 Petitioners, Pacific Telecom, Inc., and Micronesian Telecommunications Corporation  
25 ("MTC"), are corporate entities, named as defendants in the above-entitled matter. They reserve  
26 their right to assert independent interests as to any issue or matter in this action, including to any  
27

issues or matters relating thereto, and without waiving any defenses and objections, joint or separate.

They state:

1. Petitioners hereby assert their right under the provisions of 28 U.S.C. §1441, *et seq.*, to remove this action from the Superior Court of the Commonwealth of the Northern Mariana Islands Saipan, in which said action is now pending under the above-captioned title.

2. This is an action in which the federal district court has original jurisdiction upon of the following bases: Plaintiff's cause of action is based upon a claim or right that infringes upon the Constitution, treaties or laws of the United States, 28 U.S.C. §1441(b) (applying 28 U.S.C. § 1331), See, Plaintiffs' Summons, Verified Complaint and Demand for Jury Trial, attached to this Notice of Removal as Appendix "A."

## **PLAINTIFFS' CAUSES OF ACTION:**

3. Plaintiffs seek termination and ejectment of MTC from MTC's right to sue the rights-of-way/easements given by the CNMI Government, under its telecommunications franchise agreement with MTC, in violation of a MTC's contractual relationship with the CNMI Government to serve as the CNMI local telephone exchange carries.

4. Plaintiffs seek the remedy of leasehold termination and ejectment of MTC from previously-acquired leases/telecomcable rights-of-way/easements from its various telecommunications network throughout the CNMI and from the MTC's remote switching stations located at: Susupe, Saipan; As Gonno Saipan; Garapan, Saipan; Kagman, Saipan, Tinian, and, Sinapalu, Rota, the effect of which is granted would cause a CNMI wide cessation of telecom services and a barrier to MTC providing interstate and/or intrastate telecommunications services for the people of the CNMI.

1  
2  
3  
4  
5  
6  
5. MTC is the duly franchised CNMI telecommunications local exchange carrier and  
subject to the provisions of the Federal Telecommunications Act of 1996, P.L. 104-104, 110 Stat. 59  
(1996), codified at 47 U.S.C. § 251, *et seq.*, MTC holds various rights-of-way/easements from the  
CNMI Government for its underground telecommunications cable used to transmit  
telecommunications data.

7  
8  
9  
10  
11  
12  
6. Plaintiffs have embarked on a course of conduct, which seeks to impose lease and  
easement requirements that are discriminatory and not competitively neutral, the effect of which  
would amount to a regulatory scheme that would prohibit MTC from providing competitively-priced  
telecommunications services in violation of 47 U.S.C. § 253, a law of the United States. Plaintiffs'  
actions pursuant to this scheme are unlawful and are pre-empted by federal law.

13  
14  
15  
16  
17  
18  
7. Plaintiffs' causes of action clearly disclose that they seek unfair and unreasonable  
compensation from MTC by signing rates which are not competitively neutral and are  
discriminatory. Such actions violate 47 U.S.C. § 253, a law of the United States. Plaintiffs' actions  
would ultimately prohibit MTC's ability to provide fair and competitively priced  
telecommunications services. They also are pre-empted by federal law.

19  
20  
21  
22  
23  
24  
25  
26  
27  
8. Although Plaintiffs action is allegedly not contrary to the MTC / CNMI Government  
telecom utility service franchise agreement which allegedly was modified by the CNMI Fiber Optic  
Communications Facilitation and Competitive Telecommunications Act of 1996, 2 CMC § 1222(b),  
*et seq.*, under which Act all breaches or default committed by a party of the terms and conditions of  
a right- of-way given are subject to enforcement by the Secretary of the CNMI Department of Lands  
and Natural Resources, not by MPLA. Further, to the extent the application of the Act impairs an  
existing contractual obligation entered into prior to the Act, such would violate the U.S.  
Constitution, Article I, Section 10.

1       9. Plaintiffs seek divestment of MTC's right-of-way use under its franchise agreement,  
2 purportedly modified by the CNMI Fiber Optic Communications Facilitation and Competitive  
3 Telecommunications Act of 1996, 2 CMC § 1222(b), *et seq.*, which in turn is premised upon the  
4 jurisdictional authority of the Marine Sovereignty Act of 1980, 2 CMC § 1101, *et seq.*, and the  
5 Submerged Lands Act, 2 CMC § 1201, *et seq.*, each of which local laws was declared pre-empted  
6 by or in violation of federal law. See. in *CNMI v. United States*, 399 F.3d 1057, 1066-67 (9<sup>th</sup> Cir.  
7 2005). Further, Plaintiffs' assertion of authority over CNMI submerged lands, as defined in 2 CMC  
8 § 1213(k), violates the Supremacy Clause of the United States Constitution and gives rise to a claim  
9 or right arising under the Constitution, treaties or laws of the United States, which claims or rights  
10 MTC may seek declaratory and/or injunctive relief to assert Federal pre-emption. *Bud Antle, Inc. v.*  
11 *Barbosa*, 45 F.3d 1261, 1269 (9<sup>th</sup> Cir. 1994) (even in absence of explicit statutory provision  
12 establishing a cause of action, party may ordinarily seek declaratory and/or injunctive relief against  
13 state action on the basis of federal pre-emption).

14       10. Plaintiffs seek divestment of MTC's rights under its franchise agreement with the  
15 CNMI Government, by asserting that the agreement was modified in accordance with the CNMI's  
16 Fiber Optic Communications Facilitation and Competitive Telecommunications Act of 1996, 2 CMC  
17 § 1222(b), *et seq.*, but this Act infringes upon and impairs the pre-existing contractual terms in  
18 existence between the CNMI Government and MTC, in violation of the U.S. Constitution, and  
19 MTC/PTI's rights arising under the Constitution, treaties or laws of the United States.

20       11. Pursuant to 28 U.S.C. §1446, a copy of this Notice of Removal is being filed with the  
21 Superior Court of the CNMI, and this Notice of Removal is being served on all adverse parties.

22       12. Petitioners reserve the right to amend or supplement this Notice of Removal.

**WHEREFORE**, Petitioners do hereby remove the action now pending against them in the Superior Court of the CNMI, Saipan, as Civil Action No. 05-0393C, to this Court.

RESPECTFULLY SUBMITTED this 2<sup>nd</sup> day of November, 2005.

Colin M. Thompson  
Attorney for Defendants  
Pacific Telecom, Inc., and  
Micronesian Telecommunications Corporation